

General Terms and Conditions and Security Agreement

IN CONSIDERATION OF Liquid Mix (WA) Pty Ltd A.B.N. 90 127 094 008, (hereinafter referred to as “the Company”) providing commercial credit facilities to the party completing the application (hereinafter referred to as “the Customer”) annexed to these conditions:-

- (i) The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods and/or Services by the Company and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer. Any request from the Customer to the Company for the supply of Goods and / or Services shall constitute acceptance of these general terms and conditions.
- (ii) The Customer hereby charges in favor of the Company all its estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which it now has any legal or beneficial interest or in which it later acquires any such interest, with payment of all monies owed by the Customer and consents to the lodging by the Company of a caveat or caveats which note its interest in or over any such land or other caveatable property;
- (iii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

TERMS

These terms and conditions, including any Credit Limits set by the Company, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company by any means. Unless or except specifically excluded herein, the company and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement.

“Goods” and/or “Collateral” shall mean all goods and/or services supplied by the Company to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which the Company may intend to register a Security Interest.

“Price” shall mean the cost of the Goods as referred to in the Company’s price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.

1. Jurisdiction

- a. This agreement shall be construed in accordance with laws of the **State of Western Australia** and, where applicable the Commonwealth of Australia and the Customer submits to the non-exclusive jurisdiction of the courts of **Western Australia**.
- b. The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

2. Personal Property Securities Act (2009)

- a. The Customer consents to the Company effecting a registration on the PPSA register (in any manner the Company deems appropriate) in relation to any security interest arising under or in connection with or contemplated by these terms.
- b. The Customer waives its right to receive notice of a verification statement in relation to any registration by the Company on the register.
- c. The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with the Company and do any other act or thing that the Company requires to ensure that the Company has a perfected security interest in, and has priority over any other security interests in, the Goods or otherwise.
- d. The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security Interest in the Goods.
- e. The Customer will not register a financing change statement in respect of the security interest without the Company’s prior written consent.
- f. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
- g. Notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.
- h. The Company agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e).
- i. If the Company receives any notice in relation to the Customer under section 64 of the PPSA, all outstanding amounts may, at the Company’s discretion, become immediately due and payable.
- j. The Customer agrees to reimburse, upon demand, the Company for all costs and/or expenses incurred or payable by the Company in relation to registering or maintaining any financing statement, releasing in whole or in part the Company’s security interest or any other document in respect of any security interest;
- k. In these terms the following words have the respective meanings given to them in the PPSA: commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.

3. Retention of Title

- a. Property in all the Goods supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and/or legal costs incurred, have been paid in full.
- b. The Goods, whether as separate chattels or as components, shall be stored in such a manner as to be clearly identifiable as the property of the Company until title has passed to the Customer.
- c. The Company may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.
- d. In the event that the Customer defaults in the payment of any monies owing to the Company, the Company and its employees or agents shall have the right to enter without notice upon the Customer’s premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession.

4. Payment Terms

- a. At the Company’s sole discretion, a deposit may be required prior to any supply.
- b. Credit Account Customers are required to pay all amounts for purchases, in full and with no deduction or set-off, no more than 28 days from the date of invoice for any given purchase or supply.
- c. In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.
- d. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses. The Customer acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency.
- e. The Customer agrees that the Company may, at its absolute discretion, apply any amounts received from the Customer toward amounts owing to the Company in such order as the Company may determine.
- f. Interest on overdue amounts may be charged at a rate of 0.577% per week and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- g. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer’s indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- h. The Customer shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Company) for all costs incurred as a result of any cheque or electronic banking transaction being dishonored for whatever reason.

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5. Delivery

a. The Company shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver Goods, either whole or in part, due to circumstances beyond its control.

6. Defects

a. The Customer shall inspect the Goods upon delivery and will, within 24 hours, notify the Company of any defects, short deliveries or any failure to fulfill any quotation or order.

b. The Customer will, within a reasonable time following delivery, grant the Company access to the Goods in order to inspect for any alleged defects.

c. Should the Customer fail to notify the Company within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

7. Warranty & Returns

a. The Company warrants that Goods supplied shall be of merchantable quality.

b. The Company does not warrant that the Goods are fit for a particular purpose and, except or unless otherwise stated herein, warranties relating to title, defects or conformity of the Goods are expressly excluded.

c. Returns will be accepted only if prior arrangements have been made with the Company and charges, including but not limited to re-stocking fees, may apply.

d. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

8. Risk

a. Notwithstanding Retention of Title provisions as per clause 3 hereof, the risk in Goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.

b. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

9. Cancellation

a. The Company may cancel the delivery of Goods at any time before delivery by giving notice to the Customer by any means.

b. The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.

c. The Customer may cancel the delivery of Goods at any time before delivery by giving notice to the Company by any means.

d. In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any costs incurred by the Company up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Company.

10. Limitation of Liability

a. The liability of the Company to the Customer for any reason related to the performance of Goods under this agreement shall be limited to the replacement or repair of the Goods or the amount paid or payable by the Customer in respect of the particular Goods.

11. General

a. The Company accepts no responsibility for changes in any law which may affect supply.

b. Neither the Company nor the Customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.

c. The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.

d. The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment.

e. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply.

Privacy

The Company is committed to protecting your privacy. We will comply with the **Privacy Amendment (Enhancing Privacy Protection) Act 2012** which amends the **Privacy Act 1988 (Cth)**. In accordance with the Australian Privacy Principles as contained in the Act, and as reflected in the Company's Privacy Policy, persons will be given access to their personal information upon request. The Company uses the types of personal information collected to enable it to supply customers with its products and services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, assessing its risk in, and collecting debts. This information may be disclosed to the Company's associated or related entities, parties related to the Customer's employment (e.g. referees and others as set out in the Privacy Policy) contractors, other credit providers, whether or not an account is overdue and, if necessary, its risk insurers, debt collectors and credit reporting agencies. If all or part of the information requested is not provided, the Company may not be able to consider any application or to provide credit facilities. Customers who have any concerns about, or would like a copy of, the full Privacy Policy are requested to direct them to:

The Administration Manager, P O Box 1222, CANNING VALE DC WA 6970.

I/We acknowledge and give consent that the Company may make enquiries as to the credit and financial situation of me or any of us and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Credit Application, as the Company reasonably sees fit from time to time, for purposes including but not limited to;

- passing the information on to a credit reporting agency,
- passing the information on to a debt collector,
- obtaining further personal information, including consumer and/or commercial credit information, relating to me or any of us from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the **Privacy Amendment (Enhancing Privacy Protection) Act 2012** which amends the **Privacy Act 1988 (Cth)**.
- Further, that the consent hereby given shall remain in force until all monies owing have been paid in full and the Customer no longer has an open account with the Company.

I have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.

I warrant by signature below that the information given in support of this application is true and correct.

I further warrant that I am authorized to sign on behalf of the Customer and to bind the Customer in contract.

Print Name:

Signature:

Date:

Title:
